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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/535,327
Filing Date: February 06, 2006
Appellant(s): STEEL, CHRISTOPHER G

Michael J. Marcin

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/19/2008 appealing from the Office action mailed 06/12/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 7013391 B2

Herle

5-2006

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herle et al. (US Pat 7013391), hereafter "Herle."

Consider claim 1, Herle discloses a method of distributing the location of a mobile device (see the title, col. 6 lines 61-63, where Herle discusses a method for distributing the location of a mobile device). Herle discloses determining the location of the mobile device (see the abstract, col. 1, lines 22-27). Herle discloses encrypting

the determined location using an encryption key (see the abstract, fig. 2). Herle discloses transmitting the encrypted location to a server (see fig. 4, step 415, col. 6, lines 41-46). Herle discloses storing the encrypted location at the server (see fig. 4, step 415, col. 6, lines 46-48). Herle discloses querying the server from a remote terminal (see fig. 4, step 420, col. 6, lines 48-50). Herle discloses transmitting from the server to the remote terminal the encrypted location in response to the query (fig. 4, step 425; col. 6, lines 54-56). Herle discloses decrypting the location at the remote terminal using the predetermined encryption key (fig. 1, col. 6, lines 54-56). Herle discloses sharing the predetermined encryption key between the mobile device and the remote terminal (see col. 5 lines 6-12, where Herle specifies that "*The use of encryption-decryption keys enables the mobile station to give its location out only to those having authorization from the mobile station user*," i.e., another mobile terminal user), but does not explicitly refer to *not sharing the encryption key with the server*. However, Herle states that "*MS position server application program 330 may also be responsible for controlling access to mobile station database 360* (see col. 6 lines 1-3) and, furthermore, Herle also discloses in step 425 of figure 4 an embodiment in which the server transmits the encrypted position data to the client device which then decrypts the position data (see col. 6 lines 52-56) that which would have made obvious to one of ordinary skill in the art at the time the invention was made to see the suggestion of another embodiment implementation of the invention wherein the MS does not share with the server the use of the *encryption-decryption key that enables the mobile station to give its location out only to*

those having authorization from the mobile station user, as stated in the quotation of col. 5 lines 6-12 above.

Consider **claim 2**, Herle et al. show a mobile phone that determines its location, encrypts its location using an encryption key (abstract; fig. 2), transmits the encrypted location to a server (abstract; fig. 1; col. 1, lines 22-27; fig. 4, steps 410 and 411: MS 111 accesses MS location server 160 and establishes a secure connection and transmits encrypted location data to MS location server 160), and shares the predetermined encryption key with a remote terminal but not the server (MS location server 160 –fig. 1, col. 6, lines 54-56- transmits the encrypted MS 111 position data to the client access device, which then decrypts the MS 111 position data: only mobile station and the remote terminal share encryption key in this embodiment of the invention).

Consider **claim 3**, Herle et al. clearly disclose a server that receives and stores an encrypted location, which is encrypted with an encryption key and corresponds to a mobile device (fig. 4, step 415; col. 6, lines 41-46); and in response to a query from a remote terminal, to transmit to the remote terminal the encrypted location (MS location server 160 –fig. 1, col. 6, lines 54-56- transmits the encrypted MS 111 position data to the client access device, which then decrypts the MS 111 position data: mobile and remote device only share encryption key); wherein between receipt and transmission of the encrypted location by the server, the server is not in possession of the encryption key.

Consider **claim 4**, Herle et al. clearly disclose a terminal that queries a remote server for the location of a particular mobile device with which it has shared an encryption key independently of the server (terminal: reads access device -fig. 1; (fig. 4, step 420; col. 6, lines 48-50; claim 15); and upon receipt of an encrypted location encrypted with the encryption key, decrypting the location (MS location server 160 –fig. 1, col. 6, lines 54-56- transmits the encrypted MS 111 position data to the client access device, which then decrypts the MS 111 position data).

(10) Response to Argument

Appellant's arguments filed on 02/29/2008 have been fully considered but they are not persuasive.

Regarding appellant's arguments that Herle, the applied prior art reference, does not disclose "sharing the predetermined encryption key between the mobile device and the remote terminal but not with the server", the examiner reasserts that Herle discloses a second embodiment in which a person of ordinary skill in the art would clearly see that said argued feature is taught in column 6 lines 46-60, which citation follows:

MS location server 160 stores the encrypted MS 111 position data in a corresponding record in mobile station database 350 (process step 415). Thereafter, MS location server 160 may periodically or aperiodically receive access requests from client access devices. MS location server 160 then authenticates the client access devices using user name and password verification procedures (process step 420). In one embodiment of the present invention, if the client access device properly authenticates, MS location server 160 transmits the encrypted MS 111 position data to the client access device, which then decrypts the MS 111 position data. In an alternate embodiment of the present invention,

MS location server 160 decrypts the MS 111 position data and transmits unencrypted MS 111 position data to authenticated client device (process step 425).

The examiner reads the underlined part of the previous citation as disclosing the argued feature because the server is authenticating the device using a ***user name and password, not encryption keys*** (no need to exchange keys or for the server to know the keys) and the server further sends the position data encrypted so that the device can decrypt the data (i.e., no decryption is performed at the server ***in this embodiment***).

Therefore the rejection, as stated in the Final Office Action mailed on 02/22/2008, is appropriate.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

AG/ag

November 8, 2008

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